

# RATING THE LEGISLATIVE ENVIRONMENT

Even before the gavel sounded to close the 104th Congress, environmentalists and deregulation advocates were jockeying to write its epitaph. Now these traditional adversaries have published competing "report cards" of the 1995–1996 Congress's activities in the environmental arena. To critics of overregulation, the 1995–1996 sessions were a disappointment, with Congress failing to reform many of the United States' environmental laws. But to conservationists, the 104th Congress gained notoriety for its attempts to dismantle landmark laws that protect the environment and public health.

After the 1994 national elections, many conservative Republicans arrived in Washington, DC, with a so-called regulatory reform agenda. "A lot of Republican freshmen had run on issues such as guaranteeing property rights, protecting private usage of federal lands, and restricting the scope of the Endangered Species Act," says H. Sterling Burnett, an environmental policy analyst and author of *An Environmental Report Card on the 104th Congress*, issued by the National Center for Policy Analysis. The NCPA is a nonprofit research institute, based in Dallas and Washington, DC, that is self-described as pro-free enterprise and critical of some environmental regulations as being too burdensome on individuals and businesses.

In 1995, the new Republican majority introduced several measures with sweeping implications for the environment. For example, Congress attempted to rewrite the Clean Water Act, the Endangered Species Act, and the Superfund law,

though each bill was blocked.

Congress also tried to cut environmental regulatory authority through the appropriations process. In September 1995, the Senate cut \$1.5 billion from the EPA's \$7 billion budget, and passed 17 provisions that environmentalists said would result in rollbacks of clean water and air regulations. President Clinton vetoed the bill on 18 December 1995.

The congressional leadership's aggressive approach created some "bad public relations," says Burnett. "Republicans often presented only the negative face of reform, trying to slash this program and cut that program. Instead, they needed to explain that they were trying to help people, to provide incentives for environmen-

tal protection." By 1996, Republicans "were taking a beating on the environment, and they're still keeping their heads low," Burnett said.

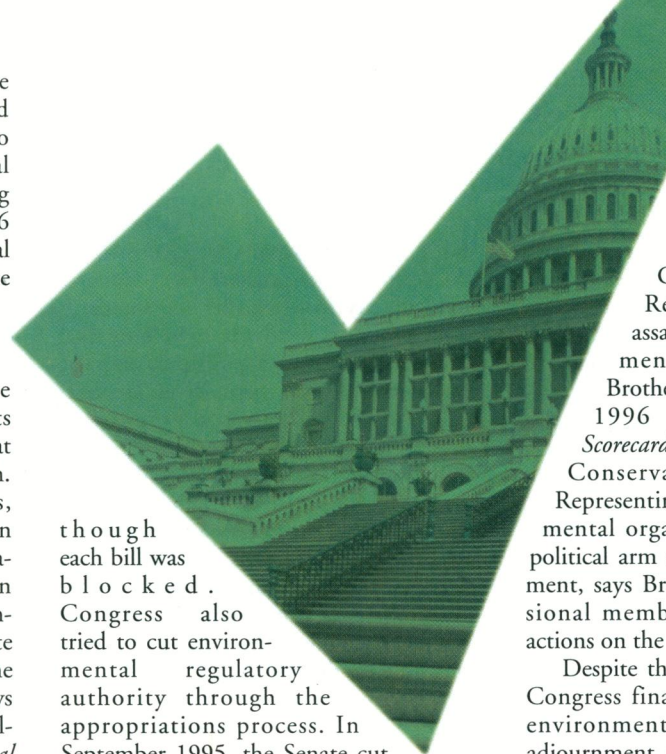
Conservationists saw the Republicans' strategy "as an assault on 25 years of environmental progress," says Paul Brotherton, editor of the 1995 and 1996 *National Environmental Scorecard*, published by the League of Conservation Voters (LCV).

Representing the views of 27 environmental organizations, the LCV is the political arm of the environmental movement, says Brotherton, "holding congressional members accountable for their actions on the environment."

Despite the rancorous tone, the 104th Congress finally passed some important environmental bills, many just before adjournment. Congress passed laws to better manage fisheries, improve management of drinking water, control exotic marine species, and establish new standards for pesticides in food, among others. "The 104th Congress ended up with a pretty good environmental record," says David Goldston, legislative director for Congressman Sherwood Boehlert (R-New York), who is considered a moderate voice for environmental protection.

## A Conservative View

To free-market advocate Burnett, the 104th Congress was characterized by





missed opportunities. Although Republicans introduced several measures intended to remake the entire regulatory system, none passed. Instead, only narrowly focused measures became law. "What did not [pass] was more important than what did," Burnett says.

For example, in 1995, former Majority Leader Robert Dole (R-Kansas) introduced a "supermandate" bill that would have required each federal agency to prove within 10 years that all existing major regulations (those costing more than \$100 million to the U.S. economy) were cost-effective; that is, the laws would have to provide environmental benefits worth the dollar cost to businesses and society. "Careful cost-benefit analysis should be built into every environmental law," agrees Burnett. But lacking enough votes to pass it, Dole withdrew the proposal in 1996.

Major property rights, or "takings," bills were also introduced. Under these takings bills, federal agencies would have to pay landowners whose property values were adversely affected by regulations. A takings measure that passed the U.S. House of Representatives would have required federal agencies to offer cash payments to property owners whenever wetlands or endangered-species regulations diminished their land's value by one-fifth. A takings measure that passed a Senate committee would have required compensation if any regulation diminished a property's value by one-third.

President Clinton stated that he would veto any takings bill that crossed his desk—one reason that these measures lost steam. "I wish we could have a broad takings law, but it will not happen while President Clinton is in office," Burnett says.

Burnett chose which laws to discuss in *An Environmental Report Card on the 104th Congress* and their grades by a number of criteria: whether the laws improve human health and environmental quality, whether they reduce regulatory burdens, whether they improve science in environmental policy, and whether they expand "individuals' liberty and their opportunities to increase their wealth and satisfy their desires."

The NCPA scorecard does not include a grade for the Magnuson Act reauthorization bill passed by the 104th Congress. This law requires that regional managers take steps to stop overfishing in federal waters, rebuild depleted fish stocks, and protect fish habitats. The NCPA scorecard ignores this law because it "only indirectly affect(s) the general population," Burnett writes.

Also not discussed is a law to control the spread of exotic marine species, such as zebra mussels, in U.S. waters. The law

establishes voluntary guidelines for the release of ballast water (which often carries exotic species) for all ships that enter lakes, rivers, and estuaries. Instead, the report grades the Freedom to Farm Act, which reduces federal crop support payments to farmers over seven years. This law, which received a B-/C+, cuts wasteful spending but also creates new bureaucracies to promote and protect domestic crops such as kiwifruits, Burnett says.

To the Safe Drinking Water Act reauthorization, which provides additional funds to small systems, helping them reduce contaminants in drinking water, the report gives a grade of B. The law could help establish wiser spending priorities by slowing the rapid pace of new drinking water standards. The law gives more authority to states for the management of drinking water, provides funds for upgrades of water systems, and offers states latitude in how these funds can be used. "No question, this law is an improvement," Burnett says, though he objects to new federal guidelines requiring states to certify water utility operators.

The NCPA scorecard also gives a B to the Small Business Regulatory Enforcement Fairness Act, which allows Congress to review and veto all new major rules—those with an impact of more than \$100 million—before they can be implemented.

Finally, the report gives a C- to the Food Quality Protection Act. Burnett admires the law for supplanting the controversial Delaney Clause, which mandated that the EPA could not allow any level of pesticide residues in processed foods if the chemicals presented even the remotest risk of causing cancer, yet he worries that future pesticide standards could be far more stringent than those under the Delaney Clause, with far greater costs of compliance for businesses. Environmentalists had long argued to keep the Delaney Clause because it prohibited the addition of carcinogens to the food supply, thus providing some measure of protection against avoidable cancers in humans. But many scientists have stated that the pesticide residues in question are negligible and do not pose a serious threat to consumers.

Although the Delaney Clause was eliminated, the new law could make regulations stiffer for the use of new and existing pesticides. The EPA is now required to review all standards for pesticides and consider new scientific information in making its regulatory decisions. The EPA can consider dietary consumption of people exposed to pesticides in food, cumulative effects of chemicals, and special health risks of certain populations such as children and minori-

ties, among other criteria.

The Food Quality Protection Act "has the potential to be more stringent," agrees Peter DeFur, a biologist at Virginia Commonwealth University's Center for Environmental Studies, because "the EPA has the authority to consider greater sensitivities, combinations of chemicals, [and] different exposure factors."

## A Conservationist View

The two sessions of the 104th Congress were dramatically different, says Brotherton. The 1995 session had a large number of significant votes, while in the 1996 session no landmark pieces of legislation were voted on.

The LCV lists 13 floor votes on key bills or amendments during each session for each chamber. The *National Environmental Scorecard* does not consider any votes on bills that stalled in committees, nor does it consider whether a member of Congress sponsored or cosponsored a measure that the LCV regards as having either harmful or positive consequences for the environment. Thus, each member of Congress had the same opportunity, regardless of committee assignment, to vote on these measures.

For each session, the LCV report gives a score from zero to 100 (high numbers being pro-environmental, according to the LCV's criteria) to each member of Congress. The numbers reflect the percentage of times that congressional members agreed with the LCV. For example, a congressional member in 1996 who voted twice in agreement with the LCV in 13 votes received a score of 15.

*National Environmental Scorecard* scores for outspoken members of Congress usually reflect their public stances. Some harsh critics of environmental regulation, such as Congresswoman Helen Chenoweth (R-Idaho) and Senator Orrin Hatch (R-Utah), had scores of zero each year. On the other hand, some strong supporters of environmental regulation, such as Congressman Henry Waxman (D-California) and Senator Paul Sarbanes (D-Maryland), had scores of 100 each year.

The 1996 *Scorecard* notes that the LCV "only includes votes on which members of Congress were faced with a real choice on whether or not to protect the environment; it excludes some environmental accomplishments that passed by voice vote or were approved with broad consensus because they do not help to distinguish pro- and anti-environmental legislators." As a result, the *National Environmental Scorecard* ignores bipartisan accomplishments, such as the Safe Drinking Water Act



reauthorization. The drinking water law "worked out in committee, and when it came to the floor, it was a done deal," says Brotherton. "It was not a true indicator of who was supportive of the environment." Therefore, members who may have voted to pass the drinking water act, the pesticide law, the fisheries law, and the exotic species act could still receive a score of zero from the LCV because none of these bills are considered in its scorecard.

Still, the LCV scorecards do highlight dramatic legislative moments of 1995–1996. For example, one crucial vote, which the LCV actually counts twice, occurred in May 1995 on a Clean Water Act reauthorization bill. When the Clean Water Act rewrite was introduced, environmentalists attacked it, arguing that it would relax or waive federal pollution regulations and allow more toxic pollution to enter the nation's waterways. But the Clean Water Act rewrite was not a significant departure from the status quo, argues Jonathan Tolman, environmental policy analyst for the Competitive Enterprise Institute, a free-market think tank in Washington, DC. "The Clean Water reauthorization mostly tinkered with things on the margin. For example, it gave the EPA and companies more flexibility for some contaminants. A company would be allowed to discharge a greater amount of a contaminant into waterways, beyond the EPA standard, while reducing another contaminant discharge to zero."

The public apparently bought the environmentalists' argument. "Whenever congressional members went home, voters called them up and complained" about Republican proposals, says Goldston.

Thirty-four House Republicans broke away from the majority and voted against the House's Clean Water Act bill, which nevertheless passed. A similar bill, though, died in the Senate.

"The bloc of moderates became larger as 1995 progressed," says Brotherton. By early 1996, many Republicans "really got careful. They did not want to vote on any more high-profile issues where they could be tarred as anti-environmental." This change can be seen in the two LCV scorecards. For the 1995 session, 135 members had a *National Environmental Scorecard* score of zero. For the 1996 session, only 44 of those members finished with a zero score.

## The 105th Congress

In the 105th Congress, Republicans are not expected to attempt such ambitious changes in the regulatory framework. "I doubt that we'll see Congress seriously trying systematic reform [such as a superman-

date regulatory-reform bill or takings legislation]," says Tolman. "Instead, there will be more focus on independent laws, such as Superfund." A pitched battle over the Endangered Species Act is also likely, he says. With strong backing from landowners and property rights groups, congressional conservatives hope to pass a drastic revision of the law, which would probably spawn bitter, partisan fighting. Congress could also reduce environmental regulation through the appropriations process, says Tolman.

During the next few years, budget cuts to reduce the federal deficit will inevitably affect science funding including environmental science, said John H. Gibbons, White House assistant to the President for science and technology, to reporters at the American Association for the Advancement of Science annual meeting on 13 February 1997 in Seattle, Washington. Only one-sixth of the entire federal budget is earmarked for domestic discretionary spending, including all nonmilitary science projects, environmental regulation and research, and many other basic government programs and services. Yet "the brunt of cutting will come in the discretionary budget," said Gibbons.

Perhaps the hottest debate in Congress today focuses on national air pollution standards proposed by the EPA. On 27 November 1996, the EPA published two court-mandated proposed rules in the *Federal Register* to tighten federal air quality rules. Under the Clean Air Act, the EPA must update these rules every five years to take into account the most recent data on the health effects of air pollutants.

The EPA proposal alarms auto manufacturers, utilities, oil companies, the National Association of Counties, and others who have formed the Air Quality Standards Coalition. Opponents of the proposals say that the new rules would be far too expensive—because businesses will have to buy expensive equipment and establish new processes to comply with the proposed standards—in relation to the health benefits they would bring. If the rules are finalized during the summer of 1997, then industry could still ask Congress to block them under the rulemaking review law passed by the 104th Congress.

But environmentalists say that the new standards are worth the economic cost. "Dozens of epidemiological studies around the world show that when ambient air pollutants increase, you have greater numbers of hospitalizations for respiratory diseases and other health effects," says Deborah Sphrentz, senior research analyst for the Natural Resources Defense Council.

The EPA standards would address ozone (urban smog) and particulate matter (dust, smoke, and soot). According to the EPA, studies conducted in the northeastern United States and Canada show that ozone air pollution is associated with 10–20% of hospital admissions for respiratory complaints during summer months. Repeated exposure to ozone can make people more susceptible to respiratory infections.

The EPA already has standards for coarse particles; the proposed rules would tighten those standards while adding new standards for fine particles. Some scientists, however, are skeptical of the research behind the proposed standards on fine particulate matter. The 104th Congress, like others before it, failed to appropriate enough funds for long-term, well-controlled epidemiological studies on health impacts of fine particulates, says Paul Gilman, a biologist at the National Research Council. Even so, the EPA administrator had no choice, under the law, but to issue updated proposed rules, he says. Said Gibbons, "We'd like to have a better science-based standard for fine particulates."

For fiscal year 1998, President Clinton has proposed an increase of 37% (from \$18 million to \$26 million) for the EPA research budget on the human health impacts of air pollutants. But to provide information for the current debate over air quality standards, these funds are far too little and too late, says Gilman. Five years ago, Congress and the EPA should have mapped out a research strategy to address "gaps in the science," he says.

The Republican leadership took a public relations beating on environmental issues during the 104th Congress. They attempted to pass regulatory reform bills that would have had enormous consequences for a number of environmental laws. Now, in the 105th Congress, they are scaling back their ambitions. They could make partners of congressional Democrats and the Clinton administration on some proposals that would affect environmental regulations. Nevertheless, congressional trackers say to expect conservatives to propose drastic changes to the Endangered Species Act and other laws that are very unpopular in some circles, and to expect EPA critics to take aim at the scientific evidence behind environmental rules. In this Congress, Republican leaders, learning from their mistakes, might start only battles they believe they can win.

John Tibbetts